

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement
Portions of AB 117 Concerning Community
Choice Aggregation.

Rulemaking 03-10-003
(Filed October 2, 2003)

**OPINION AWARDING INTERVENOR COMPENSATION
TO LOCAL POWER IN DECISION 04-12-046**

This decision awards Local Power \$43,728.25 for its contribution to Decision (D.) 04-12-046. This is a reduction of \$51,390.50 from the amount requested.

1. Background

The Commission opened this rulemaking to implement provisions of Assembly Bill (AB) 117 that would permit local governments to purchase energy on behalf of local customers acting as “community choice aggregators” or CCAs.

CCAs are governmental entities formed by cities and counties to serve the energy requirements of their local residents and businesses. AB 117 authorizes the creation of CCAs, describes essential program elements, requires the state’s utilities to provide certain services, and establishes methods to protect existing utility customers from liabilities that they might otherwise incur when a portion of the utility’s customers transfer their energy services to a CCA.

Cities and counties have become increasingly involved in implementing energy efficiency programs, advocating for their communities in power plant and transmission line siting cases, and developing distributed generation and renewable resource energy supplies. The CCA program takes these efforts one step further by enabling communities to purchase power on behalf of the community.

D.04-12-46 implemented portions of AB 117, in Phase 1 of this proceeding, by adopting an interim cost recovery surcharge (CRS) and method for calculating it and by addressing a variety of cost issues. The Commission is considering remaining implementation issues in Phase 2, which should conclude by the end of 2005.

2. Requirement for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-12.

A. Preliminary Procedural Requirements

Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference (PHC) or by a date established by the Commission. A PHC was held on November 19, 2003, and Local Power timely filed its NOI on December 1, 2003.

Section 1802(b) requires that an intervenor be a customer of a public utility. In its NOI, Local Power stated it is a Category 2 customer, being a representative authorized by a customer. In this case, Local Power is representing the interests of Dominique Parducci, a low-income customer of Pacific Gas and Electric Company (PG&E).

Section 1804(b)(1) requires that an intervenor must demonstrate significant financial hardship. In its NOI, Local Power claimed that its client cannot afford to hire the necessary experts for representation in this proceeding without significant financial hardship.

On December 4, 2003, the assigned Administrative Law Judge (ALJ) in this proceeding ruled that Local Power met the procedural requirements above. This ruling also advised Local Power that the Commission subsequently may require it to produce documentation to support this claim. Such documentation is not presently required, but, as with all compensation orders, staff may audit an intervenor's records related to the award. We affirm the ruling of the ALJ.

B. Timeliness of Compensation Request

Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. Local Power filed its request for compensation on February 22, 2005, within 60 days of D.04-12-046 being issued. As noted earlier, this proceeding remains open. However, under Rule 76.72 of our Rules of Practice and Procedure, an intervenor need not await the final decision in a proceeding if it has substantially contributed to the resolution of an issue in an earlier decision. Given the length and multiple phases of this proceeding, it is reasonable for Local Power to seek compensation for its contribution to the interim opinion without waiting for a final order.

3. Substantial Contribution to Resolution of Issues

Under § 1804(c), an intervenor requesting compensation must provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.”

Section 1802(h) states that “substantial contribution” means,

in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

As provided in § 1802(h), a party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party’s position in total.

Local Power claims it made a substantial contribution to D.04-12-046 by cross-examining witnesses, presenting testimony and documents for the record, filing briefs and being fully active in the proceeding. It describes the following specific contributions it made to the decision:

- Local Power consistently advocated for close coordination with the Commission's procurement proceedings;
- Local Power proposed that the proceeding should be resolved expeditiously;
- Local Power advocated for disclosure of utility billing and usage data to CCAs;
- Local Power advocated for an approach that recognized CCAs as customers of utilities providing them with certain services;
- Local Power proposed that rates and charges for CCA services not be burdensome and that all ratepayers should assume liability for certain implementation costs; and
- Local Power proposed that the utilities be required to install and maintain additional meters at the request of the CCA.

No party takes issue with Local Power's characterization of its contributions to the decision. Though Local Power did not prevail on many of its positions and proposals, nevertheless we concur with Local Power's view that it contributed to D.04-12-046 in Phase 1 of this proceeding. Local Power provided important perspectives on the statute and practical implementation ideas. Local Power's participation here has been thoughtful and vigorous.

4. The Reasonableness of Requested Compensation

A. Total Request

Local Power requests \$95,118.75 for its participation in this proceeding. This amount is for work performed in 2004 by Paul Fenn, its director, at an hourly rate of \$150, and for preparing its compensation request in 2005, at half of this rate.

B. Hours Claimed

Local Power documents its claimed hours by presenting a daily breakdown of Fenn's hours, accompanied by a brief description of each activity.

We find that Local Power seeks compensation for excessive hours spent on various activities and for some activities that do not qualify for compensation. For example, with regard to excessive time spent on discrete activities, Local Power seeks reimbursement for 6 hours to attend a prehearing conference that lasted for less than 2 hours, 35 hours to draft a NOI to Claim Compensation, 28 hours to draft a petition to intervene, 17 hours to draft a motion to reconsider the ALJ's ruling on the proceeding schedule and workshop issues, 64 hours to draft a request for compensation, and 32 hours to draft comments on the scope of the proceeding. Local Power claims many more hours for these types of activities than parties who have requested compensation in other proceedings with comparable work products.

Because we only compensate the reasonable time spent working on a proceeding, we disallow certain hours claimed by Local Power. We disallow all but 4 hours of those claimed for drafting a petition to intervene, a pleading which in this proceeding was not required because the Commission permitted party status simply by notifying the ALJ. We disallow all but 5 hours for

drafting an NOI and all but 20 of the hours claimed for drafting the request for compensation. These hours are comparable to what we have permitted in other cases for the NOI and request for compensation in comparably complex cases. For all other allowable activities, we discount total hours by 30%. Even considering these disallowances, the hours to be reimbursed are still generous. We accord Fenn some leeway, however, as he has relatively limited experience in our proceedings.

Local Power also seeks reimbursement for 29.5 hours of travel for filing pleadings at a cost of \$150- \$187.50 for each filing. The Commission does not reimburse for travel time associated with filing a pleading. Pleadings may be mailed or sent by express mail or messenger for a small fraction of the cost Local Power claims. We disallow all hours associated with filing pleadings.

Local Power asks to be reimbursed for 55 hours spent crafting a settlement document. No settlement was presented to the Commission in Phase 1 of this proceeding, and Local Power does not represent that other parties sought Local Power's help drafting the document or that the document was ever considered a viable option in the proceeding. Local Power only states that the document provided a summary of the parties' positions and was presented to CCAs. The Commission does not reimburse hours spent drafting documents which served no useful purpose to the Commission's decision or decision-making process. The Commission does not reimburse parties for providing work product to other parties. We disallow all hours claimed for drafting the settlement document.

We note that Local Power's request for compensation does not address duplication of effort, an ordinary requirement of parties requesting compensation. In this proceeding, several parties shared many of the views

Local Power propounded. However, we find that Local Power's participation materially supplemented or complemented the presentation by other parties. (See Section 1802.5.) In any future compensation requests, Local Power must expressly address the issue of duplication of effort.

On the basis of the foregoing, we reduce the total hours claimed by Local Power as follows:

- 29.5 @ \$75/hour claimed for travel in order to file pleadings.
- 24 @ \$150/hour claimed for drafting a petition to intervene.
- 30 hours @ \$75/hour claimed for drafting NOI.
- 55 hours @ \$150/hour claimed for drafting a settlement.
- 44 hours @ \$75/hour claimed for drafting its request for compensation.
- 30% of remaining hours (except those hours spent driving to and from hearings at \$75/hour).

C. Hourly Rates

Local Power requested an hourly rate of \$150 for Fenn. Local Power did not justify this rate either by demonstrating that it is a market rate or is comparable to those granted to other Commission intervenors or consultants. The failure to justify the requested rate is disappointing, given that the ALJ ruling approving Local Power's NOI required such justification.

Fenn is the executive director of Local Power. He received a graduate degree from the University of Chicago in 1992 and has worked for 12 years in energy and telecommunications regulation and law, primarily on CCA issues. We approved an hourly rate for Fenn of \$120 for work in 2003 in D.05-01-007. As

a general guideline for work performed in 2004, Resolution ALJ-184, dated August 19, 2004, allows for an increase of 8% over rates approved for 2003. Because Local Power did not justify the requested hourly rate, we apply the guidance provided by Resolution ALJ-184 and increase Fenn's hourly rate by 8%, to \$130.

D. Costs

Local Power does not request reimbursement for expenses because it states it did not keep receipts for copying, postage and similar expenses. Because we disallow the costs of travel for filing pleadings, and because we wish to reimburse Local Power for all legitimate costs, we add \$500 to Local Power's award for the costs of postage, copying and other minor expenses. We base the award chiefly on the number and length of pleadings Local Power produced and the size of the service list. We would not normally make such an award in the absence of supporting documentation; that we do so here is due to the fact these are out-of-pocket expenses, and also in consideration of our substantial disallowance of the hours claimed.

E. Productivity

To assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The requested costs should be reasonable in relation to the benefits realized.

In a rulemaking such as this, productivity is not easily quantified. We therefore apply qualitative standards that consider, for example, how broad was the scope of the proceeding, how significant were the policies established, and

how great was the impact on the outcome? This rulemaking establishes policies and program elements for implementing AB 117 and applies to the three major public electric utilities serving the state, as well as to all the CCA's (municipalities and others) impacted by the legislation. The adopted policies involve an interim Cost Recovery Surcharge and other program elements related to CCA's. Considering these issues in relation to its contributions, we find the participation of Local Power to be productive.

5. Award

We award Local Power \$43,728.25 as summarized below for the work of Local Power's advocate.

Category	Hours	Rate	Subtotal
NOI	5	65	\$ 325.00
Request for Compensation	20	65	\$ 1,300.00
Travel	16.75	65	\$ 1,088.75
Pleadings/Hearing	311.65	130	\$40,514.50
Expenses (imputed)			\$ 500.00
Total			\$43,728.25

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after Local Power filed its compensation request and continuing until full payment of the award is made. We direct Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison to allocate payment responsibility among themselves based upon their California-jurisdictional electric revenues for the 2004 calendar year, to reflect the year in which the proceeding was primarily litigated.

As in all intervenor compensation decisions, we put Local Power on notice that the Commission staff may audit its records related to this award.

Local Power must make and retain adequate accounting and other documentation to support all claims for intervenor compensation, including the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, financial condition of represented customers, and any other costs for which compensation may be claimed.

6. Waiver of Comment Period

Pursuant to Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

7. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Kim Malcolm is the assigned ALJ in this proceeding.

Findings of Fact

1. Local Power has made a timely request for compensation for its contribution to D.04-12-046.
2. Some of the hours for which Local Power seeks reimbursement do not qualify for reimbursement, specifically, those related to travel time for filing pleadings and those claimed for drafting a settlement that was not presented to the Commission or otherwise relied upon by the Commission in making its decision in Phase 1 of this proceeding.
3. Local Power claims excessive hours for work in Phase 1 of this proceeding. The number of hours for which it seeks reimbursement for drafting a NOI to claim compensation and its request for compensation are substantially higher

than permitted for other intervenors in other cases and are not otherwise justified. Local Power's claimed hours for drafting pleadings, attending a prehearing conference and preparing for hearings and workshops are excessive in light of the complexity of issues addressed by Local Power in Phase 1 of the proceeding.

4. Local Power's hours claimed for attending evidentiary hearings and traveling to and from hearings reflect the hours its advocate spent in hearings and traveling to and from hearings.

5. Local Power's request for compensation did not address whether its advocacy duplicated the efforts of other parties in Phase 1 of the proceeding; however, Local Power generally complemented or supplemented the work of other parties where its positions overlapped with those parties.

6. Local Power requested hourly rates for its advocate, Paul Fenn, for which it provides justification.

7. The estimated amount for related business expense is reasonable.

8. The total of these reasonable rates and expenses is \$43,728.25.

Conclusions of Law

1. Local Power has fulfilled the requirements of §§ 1801-12, which govern awards of intervenor compensation, and is entitled to intervenor compensation, as set forth herein, for its claimed fees and expenses incurred in making a substantial contribution to D.04-12-046.

2. Resolution ALJ-184 finds reasonable an 8% annual increase in the hourly rates of intervenors. Because Local Power does not justify its requested hourly rate for Paul Fenn, it is reasonable to increase his adopted 2003 rate by 8% to \$130.

3. Local Power should be awarded \$43,728.25 for its contribution to D.04-12-046.

4. The comment period should be waived and this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Local Power is awarded \$43,728.25 in compensation for its substantial contribution to Decision (D.) 04-12-046.

2. Pacific Gas and Electric Company (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric Company (SDG&E) shall allocate payment of the award among them based upon their California-jurisdictional electric revenues for the 2004 calendar year. Each shall make its proportionate award payment within 30 days of the effective date of this order. PG&E, SCE, and SDG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, with interest, beginning May 8, 2005, the 75th day after Local Power filed its compensation request and continuing until full payment of the award is made.

3. The comment period for today's decision is waived.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision(s):	D
Contribution Decision(s):	D0412046
Proceeding(s):	R0310003
Author:	ALJ Malcolm
Payer(s):	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/Disallowance
Local Power	February 22, 2005	\$95,118.75	\$43,728.25	Excessive hours, claims for activities that do not qualify for compensation

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Paul	Fenn	Expert/ Policy Analyst	Local Power	\$150	2004	\$130
Paul	Fenn	Expert/ Policy Analyst	Local Power	\$150	2005	\$130